Cr. Appeal - 682/96

(2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060666

APPEAL OF PRISONER Division Bench (Criminal)

No. 36561 51 Name ખુશાલુ ખુમરા

Father's name ચુકતાલુ ખાકિત કોરકુ ખુલિયા ચોકડી બિજાગઢ દાલબુકા ચેરાઅલી

Residence બાગા મૈદાન બિલા રામપુરા Age 35 વર્ષ

Sentenced to આજીવન કારાવાસ On 22/3/96

Under section 302 મી.પી.કો. by ચતુર્થ અપર સત્ર ન્યા. સા. બી. સા. અમરપુર (મ.પ્ર.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 22/3/96

2 Date on which copy received 23/3/96

3 Date on which Appeal sent 31.96

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 36561 51 Name ખુશાલુ આત્મારામ

Confined in જીલ્લા જેલ Jail અમરપુર (મ.પ્ર.)

No. 293 /Law/ Dated 25/3/96 199

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ જીલ્લા ન્યાયાધીશ અમરપુર (મ.પ્ર.)

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સંલગ્ન: નિર્ણય પ્રતિલિપિ
સે. જે. કે. 11/95

Superintendent
જીલ્લા જેલ અમરપુર (મ.પ્ર.)

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appellate Court 4 APR 1996

High Court of Madhya Pradesh
JABALPUR
Reg. No. 201
Recpt Clerk
High Court, Jabalpur

(P. T. O.)

(17)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.

आदेश पत्रक

मामला क्रमांक G.A.682/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

20-12-2005

Mr. Surya Kant Mishra, counsel for the appellant.

Mr. Alok Bakshi, Govt. Advocate for the State/respondent.

Heard both the counsel.

Oral judgment.

By this appeal through the Superintendent, Central Jail, Raipur, accused Faguwa @ Fagnuram Gond has questioned the legality of the judgment of conviction and sentence dated 22nd March, 1996, passed by the 4th Additional Sessions Judge, Raipur, in Sessions Trial No.112/95, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that, as deceased Bansingh was not having any son, therefore his daughter Dukhiyarin Bai along with accused Faguwa, husband of Dukhiyarin Bai, were residing with Bansingh. The accused was pressurizing the deceased, his father-in-law, to transfer the land either in his name or in the name of Dukhiyarin Bai, but the deceased refused to oblige the accused. In the evening of 6-2-1995, the accused and Dukhiyarin Bai returned from the market, accused started saying that he is earning after doing hard labour, and the deceased is consuming liquor. On hearing the accused, the deceased said that since the land belongs to him, he will deal with the land in whatever way he wants. This enraged the accused, he all of a sudden took out the burning wood from the hearth and assaulted with the same on the head and body of deceased Bansingh. The accused after throwing the burning wood went to the threshing field. On

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आदेश पत्रक

मामला क्रमांक G.A.682/96 **सन्** 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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account of the injuries sustained by Bansingh, blood started oozing out of the injuries. Treatment was given to Bansingh at the residence in the night and in the morning, Umrit Bai informed the village Patel Anruram and after some time, Bansingh succumbed to the injuries sustained by him. Umrit Bai lodged the report in Police Station: Mainpur on 7-2-95 at about 5.15 p.m.

After registering the case, Police rushed to the scene of occurrence and prepared the Panchnama of the body of Bansingh. The body of Bansingh was sent for post-mortem examination to the Primary Health Centre, Mainpur, where post-mortem was conducted by Dr. Sunil Singh (PW-12) and he prepared the post-mortem report Ex.P-11. The Panchnama of the body Ex.P-9 was prepared. The weapon of offence i.e. the burning wood was taken into possession under Ex.P-2. Plain soil and blood stained soil were taken into possession under Exs.P-4 & P-5, respectively. Site plan Ex.P-6 was prepared.

After completion of investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, First Class, Gariyaband, who in turn committed the case to the Sessions Judge, Raipur, from where the 4th Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused, examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Govt. Pleader and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

The fact of homicidal nature of death of Bansingh has not been disputed by learned counsel for the appellant. Apart from that, Umrit Bai (PW-1) has stated in her evidence that the accused assaulted with the

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आदेश पत्रक

मामला क्रमांक CA 682/96 **सन्** ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

burning wood on the parietal region of the deceased. Dukhiyarin Bai (PW-8) also corroborated the evidence of Umrit Bai. Dr. Sunil Singh (PW-12) who conducted the post-mortem has stated that he examined the body of Bansingh and found that there was a crush injury on the head of the deceased, there was a sign of burning below the left eye, there was a lacerated wound on the right eyebrow, and there was a wound on the left shoulder & right shoulder. All the injuries were ante-mortem in nature, Bansingh died due to shock on account of brain haemorrhage and there was a fracture of the left parietal bone. His report is Ex.P-11. Therefore, in view of the above evidence of the eyewitnesses and the medical evidence, it is established that the death of Bansingh was homicidal in nature.

As far as the involvement of the accused/appellant in assaulting Bansingh is concerned, same has not been disputed by learned counsel for the accused/appellant. Apart from that, Umrit Bai (PW-1) & Dukhiyarin Bai (PW-8) are eyewitnesses to the incident. They have stated that the accused assaulted the deceased with the burning wood, on account of that he received the injuries and the same has been corroborated by the medical evidence of Dr. Sunil Singh (PW-12) who noticed six injuries on the body of the deceased. Therefore, the involvement of the accused in the crime in question is established.

Learned counsel for the accused/appellant argued that the deceased was in the habit of consuming liquor and for purchase and consuming of liquor he was selling the land, therefore, the accused advised him to transfer the land in his name or in the name of his daughter and should not waste the property. Deceased Bansingh replied that since the land belongs to him, he will deal with the land in whatever way he wants, which enraged the accused, and all of a sudden, he picked up the burning wood and assaulted the deceased without any intention to cause the death of his father-in-law.

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मामला क्रमांक G.A.682/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, the offence against the accused/appellant does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Mr. Alok Bakshi, learned Govt. Advocate for the State/respondent supported the judgment of the trial Court.

In order to appreciate the argument advanced by Mr. Surya Kant Mishra, learned counsel for the appellant, we have perused the evidence of Umrit Bai (PW-1) & Dukhiyarin Bai (PW-8) and the medical evidence. Umrit Bai has stated in her evidence that when the deceased said that he will deal with the property in whatever way he wants, as the property belongs to him, the accused picked up the burning wood from the hearth and assaulted on the parietal region. Her husband was in a drunken condition. There was no dispute between the accused and the deceased, all of a sudden, her son-in-law assaulted her husband and the accused left the scene of occurrence. After receiving the injuries, the deceased fell on the ground and blood started oozing out of the injuries.

This evidence suggests that there was no animosity among the deceased and the accused. As the deceased was in the habit of consuming liquor and for that purpose, he used to sell the land, therefore, the accused on the fateful day asked the deceased to transfer the land and not to waste the land. The deceased replied that the land belongs to him, therefore, he will deal with the land in whatever way he wants. The deceased was in a drunken condition as he consumed liquor, same enraged the accused and he all of a sudden picked up the burning wood from the hearth and assaulted the deceased. This indicates that there was no pre-plan, in a sudden quarrel, the accused picked up the burning wood and assaulted his father-in-law in a heat of passion. The deceased was not taken to the hospital and in the morning, he died.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, the above facts suggest that there was no intention of the accused to cause the death of his father-in-law. We are of the opinion that the act of the accused is covered by Exception 4 of Section 300 of the I.P.C. Therefore, the offence under Section 304 Part-II of the I.P.C. is made out against the accused.

In the result, the appeal is partly allowed. While setting aside the conviction and sentence under Section 302 of the I.P.C., the accused is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for ten years. The accused is said to be in the custody since 8-2-1995, which has not been disputed by learned counsel for the State/respondent. Therefore, the accused has already served out the sentence. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

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